

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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DENNIS J. KOPP,

Case No. 3:18-cv-00254-RCJ-WGC

Plaintiff.

ORDER

v

ISIDRO BACA.

Defendants.

16 This action is a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983 by
17 a state prisoner. On May 31, 2018, Plaintiff filed a complaint without paying the filing fee
18 or filing an application to proceed *in forma pauperis*. (ECF No. 1). On June 1, 2018, this
19 Court issued an order directing Plaintiff to file a fully complete application to proceed *in*
20 *forma pauperis*, including complete financial attachments, or pay the full filing fee of
21 \$400.00 within thirty (30) days from the date of that order. (ECF No. 3 at 2). On June 5,
22 2018, Plaintiff filed an application to proceed *in forma pauperis*, but did not include a
23 properly executed financial certificate or inmate account statements. (ECF No. 4). On
24 June 6, 2018, this Court issued an order denying the application to proceed *in forma*
25 *pauperis*, without prejudice, because the application was incomplete. (ECF No. 5 at 2).
26 In that order, this Court ordered Plaintiff to file a fully complete application to proceed *in*
27 *forma pauperis*, including a properly executed financial certificate and inmate account
28 statements, or pay the full filing fee of \$400.00 within thirty days from the date of that

1 order. (ECF No. 5 at 2). The thirty-day period has now expired, and Plaintiff has not filed
2 another application to proceed *in forma pauperis*, paid the full filing fee, or otherwise
3 responded to the Court's order.

4 District courts have the inherent power to control their dockets and “[i]n the
5 exercise of that power, they may impose sanctions including, where appropriate . . .
6 dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831
7 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure
8 to prosecute an action, failure to obey a court order, or failure to comply with local rules.
9 See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance
10 with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal
11 for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856
12 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring
13 *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833
14 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order); *Henderson*
15 v. *Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and
16 failure to comply with local rules).

17 In determining whether to dismiss an action for lack of prosecution, failure to obey
18 a court order, or failure to comply with local rules, the court must consider several factors:
19 (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to
20 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
21 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
22 *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130;
23 *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

24 In the instant case, the Court finds that the first two factors, the public’s interest in
25 expeditiously resolving this litigation and the Court’s interest in managing the docket,
26 weigh in favor of dismissal. The third factor, risk of prejudice to Defendants, also weighs
27 in favor of dismissal, since a presumption of injury arises from the occurrence of
28 unreasonable delay in filing a pleading ordered by the court or prosecuting an action. See

1 Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor – public policy
2 favoring disposition of cases on their merits – is greatly outweighed by the factors in favor
3 of dismissal discussed herein. Finally, a court’s warning to a party that his failure to obey
4 the court’s order will result in dismissal satisfies the “consideration of alternatives”
5 requirement. Ferdik, 963 F.2d at 1262; Malone, 833 F.2d at 132-33; Henderson, 779
6 F.2d at 1424. The Court’s order requiring Plaintiff to file another application to proceed
7 *in forma pauperis* or pay the full filing fee within thirty days expressly stated: “IT IS
8 FURTHER ORDERED that if Plaintiff does not timely comply with this order, dismissal of
9 this action may result.” (ECF No. 5 at 2). Thus, Plaintiff had adequate warning that
10 dismissal would result from his noncompliance with the Court’s order to file another
11 application to proceed *in forma pauperis* or pay the full filing fee within thirty days.

12 It is therefore ordered that this action is dismissed without prejudice based on
13 Plaintiff's failure to file another application to proceed *in forma pauperis* or pay the full
14 filing fee in compliance with this Court's June 6, 2018 order.

It is further ordered that the Clerk of Court shall enter judgment accordingly.

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17 DATED THIS 24th day of July 2018.
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19 
UNITED STATES DISTRICT JUDGE
L. Jones